

SENATE BILL 2977
By Fowler

AN ACT to amend Tennessee Code Annotated, Title 34,
Chapter 6, relative to power of attorney.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 34, Chapter 6, Part 1, is amended by adding the following language as a new, section:

§34-6-107.

If any person other than the principal prepares a durable general power of attorney for the principal, the document shall contain the following warning statement which the principal shall acknowledge that the individual has read or had its contents explained to that individual by initialing the same.

WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important legal document. Before executing this document you should know these important facts.

This document gives the person you designate as your agent (the attorney in fact) the power to generally do, in your name, any act or thing whatsoever, that, in the opinion of the attorney in fact, ought to be done for you or on your behalf as if you were personally present and acting.

You have the right to revoke the authority of your agent by notifying your agent orally or in writing of the revocation. If there is anything in this document that you do not understand, you should ask an attorney to explain it to you.

If you do not require your agent appointed hereunder to post a bond, then, in the event that the agent commits a wrong for which you could recover damages in a court of law, you will only be able to recover from the agent's personal assets, if any. A bond

provides insurance from which you might recover damages in the event of your agent's wrongdoing. In the event of your incapacity, your next of kin may request a court, in its discretion, to require your agent to post a bond, unless expressly prohibited by this document.

Unless this document provides otherwise, the agent is not required by law to provide an accounting to any person. However, in the event of your incapacity, your next of kin or any particular next of kin has the right to request such an accounting unless this document prohibits them from making such a request.

SECTION 2. Tennessee Code Annotated, Section 34-6-111, is amended by deleting the section in its entirety and substituting instead the following language:

§34-6-111.

(a) Subject to the requirements of subsection (b), the principal of a power of attorney under this part may direct that the power of attorney is effective at the date signed or may defer the effective date to the date the principal is determined to be disabled or incapacitated. Notwithstanding any language in the power of attorney, if the effective date is deferred to the date the principal is determined to be disabled or incapacitated, the power of attorney shall be effective at the date of signing and the person designated the attorney in fact shall be the principal's personal representative with the legal right to access the principal's medical records and physicians and to discuss the principal's health situation to determine if the principal is disabled or incapacitated to the extent that the general provisions of the power of attorney become effective.

(b) A power of attorney under this part shall be effective only when the following documents are recorded in the register's office of the county of the principal's primary residence:

(1) The power of attorney document; and

(2) The acknowledgment set forth in subsection (d) signed by each attorney in fact seeking to exercise the powers granted in the power of attorney.

Each acknowledgment of an attorney in fact may be contained in the power of attorney document or recorded as a separate document. If the attorney in fact seeking to exercise power under the power of attorney is a successor attorney in fact, the acknowledgment of such successor attorney in fact must be recorded before that attorney in fact is empowered to act.

(c) A power of attorney under this part shall remain effective until one (1) of the following is recorded in the register's office of the county in which the power of attorney was originally recorded:

(1) A revocation signed by the principal;

(2) An order of a court that the power of attorney is revoked; or

(3) A notice of the principal's death.

The only effective revocation of a power of attorney under this part during the lifetime of the principal is the recordation under subdivision (1) or (2) of this subsection (c). Unless one (1) of the documents under this subsection (c) is recorded as required, a third party may rely on the effectiveness of a power of attorney that has been recorded if the attorney in fact presenting the power of attorney presents the recorded, acceptance of appointment of such attorney in fact required under subsection (d).

(d) An attorney in fact desiring to exercise powers under a power of attorney under this part shall be empowered to act only after signing and recording the following acceptance of appointment:

ACCEPTANCE OF APPOINTMENT

I, _____ (Name of Attorney in Fact) have read the Power of Attorney of _____ (Name of Principal) and am the person identified therein as the Attorney in Fact for the Principal named therein. I hereby acknowledge the following:

- (1) I owe a duty of loyalty and good faith to the Principal, and must use the powers granted to me only for the benefit of the Principal.
- (2) I must keep the Principal's funds and other assets separate and apart from my funds and other assets and titled in the name of the Principal.
- (3) I must not transfer title to any of the Principal's funds or other assets into my name alone unless such a transfer is specifically authorized in the Power of Attorney.
- (4) My name must not be added to the title of any funds or other assets of the Principal, unless I am specifically designated as Attorney in Fact for the Principal.
- (5) I must protect, conserve, and exercise prudence and caution in my dealings with the Principal's funds and other assets.
- (6) I must keep a full and accurate record of my acts, receipts, and disbursements on behalf of the Principal, and be ready to account to the Principal for such acts, receipts, and disbursements at all times.
- (7) If the Principal is disabled or incapacitated, I must see that each required income, gift or other tax return for the Principal is timely filed.

By signing below, I acknowledge that my authority to act on behalf of the Principal ceases at the death of the Principal. I hereby accept the foregoing appointment as Attorney in Fact for the Principal with full knowledge of

the responsibilities imposed upon me, and I will faithfully carry out my duties to the best of my ability.

Date: _____, _____.

Signed: _____

Address: _____

SECTION 3. Tennessee Code Annotated, Title 34, Chapter 6, Part 1, is amended by adding the following language as a new section:

§34-6-112.

(a) Unless the durable power of attorney expressly provides otherwise, a valid durable power of attorney revokes any prior durable power of attorney.

(b) Unless the durable power of attorney expressly provides otherwise, if after executing a durable power of attorney the principal's marriage is dissolved or annulled, or an action for divorce is filed, the dissolution, annulment, or complaint for divorce revokes any designation of the spouse or former spouse as an attorney in fact for the principal.

(c) If authority granted by a durable power of attorney is revoked under this section, a third party is not subject to criminal prosecution or civil liability for acting in good faith reliance upon such durable power of attorney unless the person has actual knowledge of the revocation.

SECTION 4. Tennessee Code Annotated, Title 34, Chapter 6, Part 1, is amended by adding the following language as a new section:

§34-6-113.

(a) A principal who has executed a durable general power of attorney under the provisions of this part may designate one (1) or more third parties who, upon the

disability or incapacity of such principal, may request, not more often than quarterly, a full, true and accurate account under oath of all moneys or other things of value so received by the attorney in fact, all earnings, interest or profits derived therefrom and all property acquired therewith and of all disbursements therefrom, and showing the balance thereof in that agent's hands at the date of the account and how invested.

(b) The agent shall furnish the accounting to the requesting party within thirty (30) days of receipt of notice of the first request and shall provide further accountings at such interval as may be requested, but not more often than quarterly, until receipt of notice from the requesting party that an accounting is no longer required. Each accounting after the initial accounting should be provided within fourteen (14) calendar days following the end of the period to be covered by the accounting.

(c) Unless the durable power of attorney provides otherwise, the spouse and heirs at law of any principal may petition the court to require periodic accountings upon good cause shown.

SECTION 5. Tennessee Code Annotated, Title 34, Chapter 6, Part 1, is amended by adding the following language as a new section:

§34-6-114.

(a) If any attorney in fact fails to timely furnish any account required under §34-6-113, then upon petition by the person to whom such accounting is due, a court may find that such failure is an abuse of the power of attorney.

(b) If any attorney in fact abuses the power of attorney pursuant to subsection (a) or as defined in §34-6-115, the court may:

- (1) Revoke the power of attorney;
- (2) Require the execution of a bond in accordance with §34-6-106; or
- (3) Appoint a conservator in accordance with title 34, chapter 3.

Costs related to such order shall be taxed to the attorney in fact.

(c) The court shall apply a preponderance of the evidence standard to determine abuse.

(d) An attorney in fact who abuses a power of attorney as defined in §34-6-115(2) or §34-6-115(3) forfeits all benefits and rights with respect to the estate of the principal to which the agent would have otherwise been entitled by law, including under the principal's last will and testament, and shall be liable to the principal for treble damages plus reasonable attorney's fees; provided, however, that the preceding provisions should not apply if the principal dies intestate and the agent is the principal's sole heir at law or if the agent is the sole beneficiary under the principal's last will and testament.

(e) Nothing in this section shall be construed to limit any other remedy provided by law.

SECTION 6. Tennessee Code Annotated, Title 34, Chapter 6, Part 1, is amended by adding the following language as a new section:

§34-6-115.

"Abuse" means that the agent:

- (1) Causes the assets of the principal to be lost by mismanagement, neglect, or failure to perform the agent's duties:
- (2) Commits any crime against the person or property of the principal; or
- (3) By intimidation or deception knowingly takes control, title, use, or management of the principal's assets in such manner that a reasonable person under the circumstances would conclude that there was an intention to deprive the principal of that asset.

SECTION 7. This act shall take effect July 1, 2006, the public welfare requiring it.

